

## MINUTES

### COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

Holiday Inn-North  
2805 Highwoods Blvd., Raleigh, N.C. 27604

Thursday, August 18, 2005

#### Attending:

**Commission Members Present:** Pender McElroy (CHAIRMAN), Anna Schyette, Floyd McCullouch, Marvin Swartz, MD, Carl Shantzis, Ed.D., CSAPC, Connie Mele, Dorothy Crawford, Ellen Russell, Emily Moore, Fredrica Stell, George Jones, Laura Coker, Lois Batton, Mary Kelly, Martha Macon, Martha Martinat, Mazie Fleetwood, Paul Gulley, MD, Pearl Finch, Ann Forbes, Tom Ryba

**Commission/Committee Ex-Officio Members:** Joe Donovan, Bob Hedrick

**Commission Members Absent:** Bernard Sullivan Jr., Ph.D. (excused), Ellen Holliman (excused), William Sims, MD (excused), Judy Lewis (excused), Buren Harrelson (excused), Lois Batton (excused) and Clayton Cone

**DMH/DD/SAS Staff Present:** Mike Moseley, Leza Wainwright, Steven Hairston, Mike Lancaster, MD, Mike Hennike, Chris Phillips, Cindy Kornegay, Stacy Silvia-Overcash, Flo Stein, Christina Carter, Markita Moore, PhD, Gerald Peacock, Starleen Scott-Robbins, Nancy Talbert, and Vanessa Holman

**Others:** Paula Cox, Tara Fields, Laurie Fisher, Christine Trottier, Barbara Moore, Kelly Schofield, Delwin Clark, Kent Earnhardt, Jean Overstreet, Robin Huffman, Charles Freed, Diane Pomper, John Crawford

#### Handouts:

##### ❖ **Mailed Packet:**

- August 18, 2005 Commission Meeting, Agenda
- Child Residential Resolution
- Dr. Jack Blackley's Resolution,
- Advisory Committee's: Summary of Proceedings
- Draft of July 14, 2005 Advisory Committee Minutes
- Draft of July 13, 2005 Rule Committee Minutes
- Resolution of Difference of Opinion 10A NCAC .28F .0212 Summary Report & Proposed Rule Amendments
- Panel Appeals Procedures 10A NCAC 27G .0810 Summary Report and Proposed Rule Amendments
- Regions for Division Institutional Admissions 10A NCAC 28F .0101 Summary Report and Proposed Rule Amendments

- New Licensure Categories for Substance Abuse Intensive Outpatient Program (SAIOP) 10A NCAC 27G .4400 Summary Report & Proposed Rule Adoptions Substance Abuse Comprehensive Outpatient Treatment (SACOT) 10A NCAC 27G .4500 Summary Report & Proposed Rule Adoptions
- Controlled Substance Schedules 10A NCAC 26F .0100 Summary Report and Proposed Rule Amendments
- Rule Reference Materials

#### ❖ **Additional Handouts**

- The NC AHEC Mental Health Initiative
- Announcement of Dorothea Dix's Director
- Announcement of Dr. Patricia Christian's appointment
- Summary of Rules Committee Meeting
- State Operated Services Map 3 of Regions
- Selected Budget Actions Impacting MH/DD/SAS
- DHHS-DMH/DD/SAS Special Provisions Impacting DMH/DD/SAS SB 622

#### ❖ **Call to Order**

Chairperson Pender McElroy called the meeting to order at 9:37 a.m. He welcomed all attendees and asked that everyone introduce themselves.

#### ❖ **Approval of Minutes**

***The Commission unanimously approved without changes the minutes of the May 18, 2005 meeting.***

#### ❖ **Chairman's Report**

Mr. McElroy announced that the NC Council of Community Programs presented Mary Kelly with the 2005 Leadership Award for Citizen Volunteer and Floyd McCullouch received the NC Council of Community Programs Lifetime Achievement Award for his dedicated service on behalf of people with disabilities.

Mr. McElroy informed the Commission they have received three major rulemaking tasks, two are legislative mandates to initiate rulemaking for the **NC Controlled Substances Reporting System Act**. The Commission will begin developing rules that are intended to improve the State's ability to identify controlled substance abusers or mis-users and refer them for treatment, and to identify and stop the diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances. The **Appeals Process for Non-Medicaid Eligible Clients** requires the Commission to adopt rules to establish a process for Non-Medicaid eligible clients to appeal to the Division decisions made by the area program or county program affecting the client. Mr. McElroy stated it might not be possible to complete both mandates by July 1, 2006; however, the Commission will try to adhere to the timeline as much as possible.

Mr. McElroy further stated the Commission would begin rulemaking for **Provider Endorsement**. The Commission Schedule of meetings for 2006 will be available at the November 14, 2005 Commission meeting. The schedule may be revised by a week to accommodate the required 60 day public comment period. Mr. McElroy and the Division's Executive Leadership Team discussed possibly having a two-day meeting in February 2006.

Mr. McElroy gave a status report on the Child Residential rules and explained the delay in implementation of the rules. The Rules Review Commission (RRC) received two letters requesting an economic impact study by the Office of State Budget and Management (OSBM). The RRC approval process stops until this study is completed. If the impact is determined to be more than \$3 million dollars, the rulemaking process starts over. If the impact is determined to be less than \$3 million dollars, the rules would be heard at the next RRC meeting. Consequently, the RRC also received more than 10 letters objecting to the rules, which further delayed the process and requires that the rules not be adopted until after legislative review at the next legislative session. The Child Residential Resolution included in the mailed Commission packet is being proposed to allow the Chair of the Commission to have the authority to make any technical changes to the child residential rules in order to expedite the implementation process. This will allow the rules to be adopted as temporary rules once approved by the Rules Review Commission.

***The Commission unanimously approved the Child Residential Resolution on August 18, 2005.***

The Resolution of Dr. Jack Blackley was proposed to honor his work and humanity during his career at DMH.

**RESOLUTION OF THE  
COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL  
DISABILITIES AND SUBSTANCE ABUSE SERVICES**

**August 18, 2005**

**WHEREAS**, Dr. Jack Blackley, a native North Carolinian, graduated from high school in Hamlet, NC, served in the United States Army in combat in North Africa and Italy in World War II, was one of the first U.S. soldiers on the continent of Europe eight months before D-Day, and was the recipient of two bronze star metals for valor as well as numerous other military decorations; and

**WHEREAS**, after World War II Dr. Blackley received the B.S. degree in Medicine from the University of North Carolina and an MD degree from McGill University in Montreal, Canada; engaged in general practice in Hamlet; served as Director of Medicine and Assistant Medical Superintendent of John Umstead Hospital, Director of Murdoch Center and Director of the NC Alcoholic Rehabilitation Center in Butner; and he served as the first director of the Division of Alcoholism and Medical Director and as the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services; and

**WHEREAS**, Dr. Blackley served as Adjunct Professor of Psychiatry at the UNC School of Medicine and received the Order of the Long Leaf Pine and a number of other professional honors and recognition; and

**WHEREAS**, Dr. Blackley was deeply committed to and provided exemplary service to the citizens of North Carolina and in particular our citizens suffering from mental illness, developmental disabilities and substance abuse; and

**WHEREAS**, after his retirement Dr. Blackley faithfully attended meetings of the Commission for MH/DD/SA Services and served as a mentor and advisor to commission members, and particularly to the current chairman;

**NOW, THEREFORE, BE IT RESOLVED**, that the Commission hereby expresses thanks to the Almighty for the magnificent life and highly effective and dedicated service of Dr. Jack Blackley; expresses its deepest condolences to Dr. Blackley's family; and holds up Dr. Jack Blackley as the personification of a good and faithful servant.

***The Commission unanimously approved the Resolution of Dr. Jack Blackley's contributions to the Division of Mental Health/DD/SA service on August 18, 2005.***

❖ **DMH/DD/SAS Director's Report**

Mike Moseley expressed his appreciation to the Commission for honoring Dr. Jack Blackley for his contributions to the Division. Mr. Moseley stated he considered Dr. Blackley a dedicated worker and mentor and he will be missed.

Mr. Moseley introduced Steven Hairston as the new Chief of the Operation Support Section.

Mr. Moseley reported the Division is still working with Centers for Medicare and Medicaid Services (CMS) regarding the service definitions. The largest goal to meet is the amendment of the State Medicaid Plan but the CAP MR/DD waiver has been approved. Mr. Moseley stated that because CMS' review has taken longer than expected it has prevented the Division from meeting its target dates; therefore, the Division has decided to wait until the amendment is approved by CMS before announcing another date for implementation of the new service definitions.

Mr. Moseley gave an update regarding director appointments and vacancies in the State facilities. Beverly Vinson is the new Director of Caswell Center; Dr. Frank Farrell is the new Director of O'Berry Center and Dr. Aleck Myers is the new Director of Murdoch Center. Dr. Patricia Christian, formerly the director of John Umstead, has been appointed Director of the new hospital and will oversee the day-to-day operational aspects of the planning associated with the new hospital.

Mr. Moseley assured the Commission that Dr. Christian would not use the John Umstead model to operate the new hospital. The new hospital will operate in accordance with its own unique design. The vacancy at John Umstead Hospital will be filled. Mr. Moseley announced that Dr. Terry Stelle who is the current director at Dix has announced his retirement effective October 1, 2005 and Dr. James "Jim" Osberg who was the Interim Director at Cherry Hospital will be the new Director of Dorothea Dix Hospital. The Division has posted and is currently recruiting for a Director of Cherry Hospital.

Mr. Moseley announced that Carol Martin, the Director of Blackley ADATC and William "Bill" Rafter, the Director of J. F. Keith ADATC are retiring effective October 1, 2005 (tentatively). Mr. Moseley further stated the Division will post and recruit for these vacancies.

❖ **DMH/DD/SAS Deputy Director's Report**

Leza Wainwright presented the Special Provisions impacting DMH/DD/SAS and the selected budget actions impacting DMH/DD/SAS. Refer to the attached handouts, Selected Budget Actions Impacting MH/DD/SAS and DHHS-DMH/DD/SAS Special

Provisions Impacting DMH/DD/SAS SB 622 for a summary of the topics reported by Ms. Wainwright.

❖ **Points of Discussion Regarding Budget Actions and Special Provisions Impacting DMH/DD/SAS**

Martha Macon expressed concern over the loss of the single portal of entry and exit and questioned whether this relates to the problem of group homes opening up in catchment areas without the LME's awareness. Leza Wainwright explained child teams should be preventing this by working with providers and LMEs. The special provision should prevent this from occurring in the future.

Mary Kelly asked if the MH licensure inspections included annual inspections of SA facilities. Ms. Wainwright explained the yearly review is only for residential but that the additional staff in what DFS calls the MH Licensing Section will include staff that conducts SA inspections as well.

Mazie Fleetwood raised an issue concerning the need for statewide standardization of the "local CON process."

Laurie Coker expressed a concern that there is still too much emphasis on "facility based services" rather than in-home and community based services. Marvin Swartz asked if the Division knows what the cumulative reductions in Central Office have been? Ms. Wainwright stated that the Division abolished 41 full time positions in fiscal year 2003 and received a \$200 reduction in contractual services and \$3 ¼ of a million dollars in non-recurring reductions out of the budget. Mr. Swartz stated that maybe the Commission needed to advocate to the Legislative Oversight Committee that if reform is to work and to have a competent system the Division would need enough staff with expertise and competencies. Mr. Moseley expressed his gratitude to Dr. Swartz for that point.

The issue is not having the funding to engage in external assistance resources that the Division may have used in previous years and may not be available to use this fiscal year. These are the types of obstacles the Division encounters that affect meeting day-to-day obligations. Additionally, the Division has experienced a major loss in staff because of salary levels and cannot compete with the private sector.

Laura Coker expressed the need for more 24-hour crisis services. Ms. Wainwright stated there has been some discussion with DMA about the need for creating this type of service in the future.

Mike Moseley stated he had the opportunity to attend the National Association of State Mental Health Program Directors meeting in July. There were 4 major topics of concern: (1) system reform- NC is far ahead of other states with state reform and many states that reformed in previous years are finding that they will have to rethink or re-engineer their systems. The funding issues of states is a major barrier in reforming systems, (2) the future of Medicaid funding and fragmentation at the federal level between policy and funding agencies, (3) prescription drug benefit Medicare Part B and (4) housing. There are some incredible challenges and it will

take everyone to task to use political efforts to influence Congress to make sure these funds do not disappear. Without adequate funding, it will be difficult for states to transform the system.

Pender McElroy commended Mike Moseley and Leza Wainwright for continuing efforts. Mr. McElroy stated the Division is under staffed and under financed and if there is any thing the Commission can do to let him know.

### ❖ **Advisory Committee Report**

Marvin Swartz presented the report on behalf of the Chair Dr. Don Stedman. The advisory committee discussed the issues related to workforce retention and development. The Committee was assisted in its discussions by five specialists invited to attend to help inform the discussions. There was unanimous agreement on three points. First, the success of the new strategy for delivering services depends almost entirely on the availability of trained and competent staff both for agency programs and private providers. Second, the current situation is in a critical state of confusion on policies and procedures, serious shortage of most categories of personnel, particularly “direct care” workers, and scarce resources for acquiring and retaining personnel.

Third, there is an urgent need for a strategic and long-range plan on workforce issues that needs to be developed at the highest levels of government, involve a wide range of agencies and consumer/provider groups, and focus on staffing programs at the local level.

Providers are concerned about the ability to be able to retain new competent staff in the direct care and health care positions. Dr. Stedman is prepared to develop a taskforce to develop a strategic long-term plan for workforce training but wanted to get a sense from the full Commission of whether the Advisory Committee should address this topic. There was considerable discussion of the issues related to workforce retention and development. Several Commission members recommended that a taskforce be created regarding Workforce Training.

Mike Moseley suggested that the leadership from the Advisory Committee and key personnel from the Division meet and strategically discuss “How To’s.” One of the things to be on guard about with career ladders is that there is a cost involved. There are issues of retention, recruitment and having a competent workforce. It is not just a matter of working with existing entities on how to provide workforce training but how to provide training with the new way of doing business. Mr. Moseley suggested a meeting with the NC Commission for Workforce Development, the group is in place to deal with workforce issues, and it has a leadership from various agencies. There was a consensus of the Commission for the Advisory Committee to go forward with creating a taskforce to address workforce training and development issues.

❖ **Rules Committee Report:**

Floyd McCullouch the Chairman of the Rules Committee, presented a summary of the Rules Committee meeting on July 13, 2005. Refer to the attached Summary of Rules Committee Meeting: July 13, 2005 for an outline of Mr. McCulloch's report.

❖ **Update on the Child Residential Rules:**

Dr. Mike Lancaster stated he would not report on the Child Residential rules since the Chairman had presented this information in his report. Dr. Lancaster reported staff qualification and training was going to be the next section of rule amendments to be presented to the Commission along with other amendments to core licensure rules; however, with the legislative actions concerning the Non-Medicaid appeals and Controlled Substance Reporting the core rules including staff qualifications and training would be delayed until a later date.

Mazie Fleetwood asked if the Division is continuing to work on the Child Residential rates for the rules. Ms. Wainwright stated that the letter regarding the proposed new rates for Level III and Level IV will be posted on the DMA web page. The same provider discussion process that was used to develop the CAP MR/DD rates and the enhanced services is being applied to the establishment of the child residential rates.

Mr. McElroy wanted to reiterate that there are plenty of opportunities for public review and public comment regarding the rates. When you engage representatives from providers on a face-to-face basis, it provides further input from the field. The Commission endorses the openness of the process and the opportunities provided for input from all interested parties.

❖ **Resolution of Difference of Opinions, Appeal Procedures and Region**

Mike Hennike of DMH State Operated Services presented three proposed rule amendments to the Commission the first was the proposed amendment that provides an appeals procedure for resolving difference of opinions between State hospitals and area authorities/county programs in rule 10A NCAC 28F .0810.

***The Commission unanimously approved the proposed rule change(s) for the Panel of Appeals 10A NCAC 27G .0810 on August 18, 2005.***

The second proposed amendment concerns 10A NCAC 28F .0212. The current rule language states if resolution of issues regarding authorization, admission or discharge is not reached by the Directors of the two organizations, the dispute shall be resolved following the procedures as contained in G.S. 122C 151.4. The General Statute reference is incorrect. The amendment corrects the error.

***The Commission unanimously approved the proposed rule change(s) for the Resolution of Difference of Opinion 10A NCAC .28F .0212 on August 18, 2005***



The third proposed amendment concerns realignment of the regions for admissions to State operated facilities. The regions in current rule 10A NCAC 28F.0101 are divided by psychiatric hospitals, mental retardation centers and alcohol and drug abuse treatment centers. The proposed amendment has realigned counties into a comprehensive three-region model, the Western Region, Central Region and Eastern Region. The intent is to have a region/ catchment area for each state facility that does not split LMEs across facility regions. The three-region model also distributes the population demographics in an equitable way for each facility and minimizes geographical/logistical issues for individuals who need to access the services of state operated facilities.

***The Commission unanimously approved for publication the proposed rule change(s) the Regions for Division Institutional Admissions 10A NCAC 28F .0101 on August 18, 2005.***

❖ **SAIOP and SACOT**

Starleen Scott Robbins of DMH Best Practice Team presented the proposed adoptions of SAIOP and SACOT licensure rules. The SAIOP and SACOT services are included in the service definition packet that has been submitted for approval to the Centers for Medicare and Medicaid (CMS).

Marvin Swartz questioned the rationale of establishing a maximum on the hours of operation for SAIOP. Ms. Scott-Robbins explained the structured service itself will not be able to run more than 19 hrs because the level of ASAM that this service falls under establishes a maximum number of hours for this level of care. Twenty hours or more would be SACOT, which is more like a partial hospitalization level of service. Dr. Swartz asked if a provider wanted to run two programs, with each operating up to 19 hours per week would this rule prohibit that. Ms. Scott-Robbins stated it would not.

Mr. McElroy asked for an explanation of the differences between intensive and comprehensive Ms. Scott-Robbins explained that under ASAM categories SAIOP is a lower level of service than the SACOT There is a step up in service in comprehensive outpatient treatment (SACOT-partial hospitalization level). Mr. McElroy asked if more time is devoted to an individual in SACOT than SAIOP. Ms. Robbins said the required hours an individual participates in SACOT is higher than SAIOP. Individuals in SACOT may start out attending 5 days a week and decrease as they progress in treatment/recovery or another level of care may be determined for that individual.

Mr. McElroy commented that the interpretation of .4403 (c) is unclear and should be changed. Recommended the rule read, "A SAIOP shall provide services a maximum of 19 hours per week for each client." Division staff concurred with the recommended change in the language for .4403(c). Other discussion included the following topics:

- Services for pregnant women
- Follow-up services
- Availability of services for non-Medicaid eligible clients
- Coverage of the services by private insurance

There was also a question raised about the possible need to establish a minimum number of hours of service required for each client in SACOT to mirror the language in SAIOF.

Division staff clarified that in SACOT the Division did not want to state a minimum of 20 hrs per week for each client because as an individual titerates down the individual may not receive 20 hours but SACOT is still appropriate. The Division is requiring the facility to be open a minimum 20 hours per week but not requiring an individual receive 20 hours in order for it to be billable.

Carl Shantzis recommended having paragraph (c) before paragraph (b) in .4503. Division staff concurred with this recommendation.

***The Commission unanimously approved for publication the proposed new licensure rules for Substance Abuse Intensive Outpatient Program (SAIOF) 10A NCAC 27G .4400 and Substance Abuse Comprehensive Outpatient Treatment (SACOT) 10A NCAC 27G .4500 with the changes as noted above on August 18, 2005.***

#### ❖ **Control Substance Schedules**

Gerald Peacock of DMH announced that he is the new Program Manager of the Drug Control Unit of the Justice Innovations Team. Mr. Peacock presented the proposed amendments to the NC Controlled Substances Schedules I and IV to correspond to recent additions in the federal Controlled Substances Schedules and the proposed amendments to Schedules I and V to conform to technical changes made previously on Schedules II-IV as requested by the Rules Review Commission.

Schedule I 10A NCAC 26F .0102 will add the Stimulant: N-Benzylpiperzine and Hallucinogens: Alpha-Methyltryptamine; 5-Methoxy-diisopropyltryptamine; and 2, 5-Dimethoxy-4-(n) propylthiophenethylamine

Schedule IV 10A NCAC 26F .0105 will add the drug Zopiclone. Zopiclone is the only addition with a medical use and will be marketed to the public as Lunesta to treat insomnia.

Schedule V 10A NCAC 26F .0106 was amended to conform to technical changes made previously on Schedules II-IV as requested by the Rules Review Commission.

***The Rules Committee unanimously approved the proposed rule changes to the Controlled Substance Schedules on August 18, 2005.***

#### ❖ **Public Comment**

Bob Hedrick, Executive Director of the NC Providers Council expressed his Thanks to Vanessa Holman for disseminating the meeting information to Commission members and Ex-Officios weeks before the meeting.

Mr. Hedrick thanked the Commission for supporting the rate changes for the providers, DMH and DMA in starting the workgroup to propose rates based on the new service definition and rule requirements for Level III, IV and PRTF services.

Ken Earnhardt an advocate and representative of GACPD and PAIMI presented his comments regarding the New Freedom Commission. He presented his concerns regarding Medicaid lending caps and non-maintenance for individuals who do not have Medicaid. Concerning workforce development, he stated consumer workforce was not included in the discussion and there are talented consumers available. Most of the time for consumers it is not about the money it is an opportunity to have a job. With the shortage of workforce the Division is experiencing Mr. Earnhardt recommended looking into hiring qualified consumers.

Dr. Kelly Schofield with the NC Association of Residential Treatment providers stated he was not speaking on behalf of the association but as an individual provider. He stated he is concerned that 1.4% of homes, being closed is too many homes that are not safe enough and his concerns are the homes that do not use the monies received to improve the facility by adding extra staff or improving the programs necessary to aid the children. Dr. Schofield further predicted that many companies will hire less qualified staff to cover the additional cost of the new child residential rules.

❖ **New Business**

- The next Commission meeting is Monday Nov. 14, 2005 at Atlantic Beach.
- The next Committee meetings are Wednesday October 19, 2005 for the Rule Committee, and Thursday October 20, 2005 for the Advisory Committee.
- Mr. McElroy stated he anticipated that he would be able to present the proposed Commission Schedule for 2006 on November 14, 2005.
- Mr. McElroy announced the AHEC Conference on November 30 – December 2, 2005 at Pinehurst Resort and Country Club, Mental Health Association conference in September 28-29, 2005 and the ARC of NC has its conference in September.

**There being no further business the meeting adjourned at 2:45pm**